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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Greek Gourmet, Inc.

Serial No. 75/310,083

Richard G. Heywood of Senniger, Powers, Leavitt & Roedel
for Greek Gourmet, Inc.

Andrew P. Baxley, Trademark Examining Attorney, Law Office
114 (Margaret Le, Managing Attorney)

Before Hanak, Chapman and McLeod, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Greek Gourmet, Inc. seeks to register GREEK GOURMET in
typed drawing form for "restaurant and delicatessen
services." The application was filed on June 16, 1997 with
a claimed first use date of March 1983. In the
application, applicant states that "the mark has become
distinctive of applicant's services as a result of
substantially exclusive and continuous use in interstate

commerce for the five (5) years next proceeding the date of filing this application." In essence, applicant conceded that the mark GREEK GOURMET was merely descriptive of restaurant and delicatessen services, but that pursuant to Section 2(f) of the Trademark Act, said mark had become distinctive of applicant's services as the result of substantially exclusive and continuous use for over five years.

The Examining Attorney has refused registration on the basis that applicant's evidence of acquired distinctiveness is insufficient. As stated by the Examining Attorney at page 1 of his brief, the sole issue on appeal is whether the mark GREEK GOURMET" has acquired distinctiveness under Trademark Act Section 2(f)."

Both applicant and the Examining Attorney filed briefs. Applicant requested and then waived its request for an oral hearing.

There is no dispute that initially, the mark GREEK GOURMET was merely descriptive of applicant's restaurant services, and thus would not be entitled to registration. The Examining Attorney and applicant disagree as to just how descriptive the term GREEK GOURMET is with regard to restaurant and delicatessen services. It is the position of the Examining Attorney that as applied to said services,

the mark is highly descriptive if not generic. On the other hand, it is the position of applicant that the mark is arguably simply highly suggestive of said services, and is at most just barely merely descriptive of said services.

In an effort to prove that its mark has acquired distinctiveness pursuant to Section 2(f) of the Trademark Act, applicant has simply relied upon its use of the mark dating to March 1983. When invited by the Examining Attorney to provide sales and advertising figures for restaurant services sold under said mark, applicant's attorney candidly pointed out that applicant's restaurant was a small, neighborhood restaurant in St. Louis, and that therefore applicant's sales and advertising expenditures were in keeping with a single location restaurant of this type, and thus would not by any means be extensive.

It has long been recognized that not all words and phrases are equally descriptive as applied to their relevant goods and services. Some words and phrases are very highly descriptive, and border on being generic. At the other extreme, some words and phrases are just barely merely descriptive, and border on being highly suggestive. As the descriptiveness of a word or term increases, the amount of evidence necessary to prove that said word or term has acquired distinctiveness likewise increases.

Yamaha International v. Hoshino Gakki, 840 F.2d 1572, 6 USPQ2d 1001, 1008 (Fed. Cir. 1988).

In an effort to show that the mark GREEK GOURMET is highly descriptive of restaurant services, the Examining Attorney conducted a Nexis search of this term which revealed that during a time period spanning nearly 30 years, there were fewer than 70 stories which mentioned said term. Thus, on average there were two stories per year which used the term "Greek gourmet." Most of these stories utilized this term in a descriptive manner. For example, the most recent story submitted by the Examining Attorney appeared in the September 19, 1998 edition of the Pittsburgh Post-Gazette and contained the following sentence: "Enjoy Greek gourmet and Filipino and pan-Asian foods along with pies, pastries and more." The earliest story submitted by the Examining Attorney appeared in the August 20, 1970 edition of the New York Times and it contained a reference to students "demonstrating against [a] Greek gourmet dinner to promote tourism in Greece." However, not all of the stories submitted by the Examining Attorney utilized the term "Greek Gourmet" in a descriptive manner. For example, stories appearing in The Los Angeles Times (March 18, 1988) and in The San Diego Union-Tribune (March 12, 1992) utilized the term "Greek Gourmet" in the

manner of the names of specific restaurants. In other words, the Examining Attorney's own evidence demonstrates that at least two reporters used the term GREEK GOURMET in the manner of a service mark to refer to particular restaurants.

This Board has previously noted that "it is beyond dispute that restaurant services are some of the very most ubiquitous of all types of services. Virtually every town in America has at least one restaurant and most towns (not to mention cities) have numerous restaurants." In re Municipal Capital Markets Corp., 51 USPQ2d 1369, 1370 (TTAB 1999). In addition, it is beyond dispute that in this country, Greek cuisine is at least a somewhat common cuisine. Thus, if it were the case that the mark GREEK GOURMET was highly descriptive, if not generic, as contended by the Examining Attorney, then it is hard to understand how there were fewer than 70 references to this term during a time span of nearly 30 years. The most plausible answer is that this term is not highly descriptive, but rather is, as contended by applicant, simply merely descriptive.

Moreover, we note that applicant has referenced numerous dictionaries where the word "gourmet" is defined solely as referring to a person who enjoys and appreciates

fine food. While we feel that the Nexis stories made of record by the Examining Attorney demonstrate that the word "gourmet" can also refer to highly quality food, nevertheless, the fact remains that this word has at least two meanings and that this duality of meanings tends to undercut the contention of the Examining Attorney that applicant's mark is "merely descriptive under Section 2(e)(1) because it immediately tells prospective purchasers that applicant's restaurant and delicatessen services feature Greek gourmet foods." (Examining Attorney's brief page 2, emphasis added). A person encountering the mark GREEK GOURMET in connection with restaurant and delicatessen services could just as easily assume that said services are provided by an individual (i.e. gourmet) who prepares fine greek foods.

In conclusion, we find that applicant's mark GREEK GOURMET is merely descriptive, but is not highly descriptive of restaurant and delicatessen services. In view of this finding, we conclude that applicant's showing of continuous of use of the mark GREEK GOURMET for 17 years is sufficient pursuant to Section 2(f) to establish that said mark has acquired distinctiveness indicating services emanating from applicant.

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Decision: The refusal to register is reversed.

E. W. Hanak

B. A. Chapman

L. K. McLeod
Administrative
Trademark Judges,
Trademark Trial and
Appeal Board